

## **REMARKS**

Claims 1-35 are pending. Claims 26-34 are withdrawn. Claims 1-5, 8-10, 15-25, and 35 are rejected. Claims 6, 7, and 11-14 are objected to.

By this Amendment, claims 1, 4, 7 and 35 are amended. Claim 6 is canceled.

### **CLAIM REJECTIONS UNDER 35 U.S.C. §102**

Claims 1, 16-19, 21, 23-25, and 35 are rejected under 35 U.S.C. 102(b) as anticipated by Kawasaki U.S. Patent No. 5,368,382.

Claims 1, 16-19, 21, 23-25, and 35 recite an apparatus for administering a suspendible agent in suspension. The Examiner applies Kawasaki as disclosing concrete as Applicants' suspension, and the mixer as Applicants' apparatus. However, Kawasaki's mixer accepts and mixes cement paste, not concrete. Cement paste is not a suspension, as Applicants' claims require. Because Kawasaki does not disclose an apparatus for administering a suspendible agent in suspension, it does not anticipate Applicants' claimed apparatus.

Independent claims 1 and 35 as amended require an apparatus that contains a suspendible agent suitable to be administered to a patient. Kawasaki's apparatus does not meet this limitation. Thus, Applicants assert that independent claim 1, dependent claims 16-18, and independent claim 35 are not anticipated for this additional reason. The amendment is supported at least in ¶5, thus introducing no new matter.

Independent claim 21 and dependent claims 23-25 require that the apparatus administer a suspendible contrast agent in suspension. Kawasaki's apparatus does not meet this limitation because cement is not a contrast agent, which is an agent injected into a patient to enhance an image obtained by an imaging procedure (e.g., "Contrast agents deliver their maximum effectiveness in image enhancement if uniformly suspended in the fluid base over the duration of the injection" p. 1 lines 12-14). Kawasaki's apparatus does not meet this limitation. Thus, Applicants assert that claims 21 and 23-25 are not anticipated for these additional reasons.

Independent claim 21 and dependent claims 23-25 require that the apparatus includes dividing walls that separate each pair of first and second plates. Kawasaki's apparatus has does not have dividing walls; Kawasaki's apparatus has wall panels that are stacked directly with no partitions between them ("the wall panels are put one on another in alternately front-to-front and back-to-back relations as shown in FIGS. 2 and 3", Kawasaki col. 3 lines 57-59). The Examiner's figure on p. 4 of the Action includes labels and terminology that are not found in Kawasaki's specification; Kawasaki does not disclose an apparatus having dividing walls as required by the claims.

Applicants thus respectfully assert that for at least these reasons, Kawasaki does not anticipate claims 1, 16-19, 21, 23-25, and 35.

Claims 1-5, 9, 10, 15, 19, 20 and 25 are rejected under 35 U.S.C. 102(b) as anticipated by Brown U.S. Patent No. 6,354,729.

Claims 1-5, 9, 10, 15, 19, 20 and 25 recite an apparatus for administering a suspendible agent in suspension. The Examiner states that Brown col. 3, lines 12-21, discloses a mixing apparatus for administering a suspendible agent in suspension. Brown col. 3 lines 12-21:

Apparatus in accordance with the present invention can be used to mix a single material (the term mixing in this context is used throughout the mixing industry referring to, for example, dispersive mixing of a material to break it down into smaller component parts which may be coupled with distributive mixing in distributing those smaller parts through the material as a whole) or a number of different materials including mixtures of fluids and solids, or indeed just solids which are capable of behaving in a manner analogous to fluids.

There is no disclosure of a suspendible agent. Because Brown does not disclose an apparatus for administering a suspendible agent in suspension, Brown does not anticipate claims 1-5, 9, 10, 15, 19, 20 and 25.

Claims 1-5, 9, 10, 15, 19, 20 and 25 recite a delivery container including a fluid reservoir holding a propellant fluid. Brown does not disclose an apparatus including a fluid reservoir holding a propellant fluid.

Claims 1-5, 9, 10, 15, 19, 20 and 25 recite that the suspendible agent is delivered to the exit port when the delivery mechanism is operated to cause the propellant fluid to flow through the fluid path. As Brown discloses, and as the Examiner states, propellant fluid so delivered into Brown's device would mix the contrast agent with the propellant fluid. However, Brown does not disclose that causing the propellant fluid to flow through the fluid path would deliver the suspendible agent to the exit port. In fact, Brown's purpose is "distributive mixing" (col. 2 line 23). Causing propellant fluid to flow through Brown's device would mix the propellant fluid with the suspendible agent, rather than delivering the suspendible agent to the exit port.

The Examiner states, "While not explicitly stated, one would have reasonably expected and appreciated that the device of Brown must include some means for introducing the fluid to the mixing/suspension apparatus. In other words, a fluid reservoir must be provided upstream...." Applicants respectfully disagree. There are other methods of delivering substances to be mixed than the use of a fluid reservoir as claimed. To anticipate, Brown must disclose each and every element of the claimed apparatus, including a fluid reservoir. While it is permissible to find limitations which must inherently be part of the disclosed device, it is not permissible to imply the disclosure of elements which may or may not be present for the device to function and are not disclosed. Brown's mechanism is not disclosed as being linked to any sort of external system, or part of any sort of continuous flow mechanism. As such, Brown does not anticipate Applicant's required fluid reservoir.

Brown discloses a mixer that provides physical propellant force on the material to be mixed without the need for an external propellant. Brown's mixer, as disclosed, would act on a discrete quantity of material without the need for any continuous flow. See, e.g., Brown col. 4 lines 18-40, describing the pumping action inherent in the movement of the mixer rings. As such, it is not permissible to assume the existence of propellant fluid, because propellant fluid is not necessary for Brown's device to operate, and

Brown does not disclose this element. While the Examiner infers that "the propellant fluid of Brown is an upstream quantity of fluid that in part displaces the fluid temporary [sic] disposed within the mixing/suspension apparatus", the Examiner has not shown where Brown discloses that "the introduction of new fluid to the system" propels mixed fluid to the exit port.

Because Brown does not disclose a fluid reservoir holding a propellant fluid or a suspendible apparatus that delivers a suspendible agent to an exit port when the propellant fluid flows through a fluid path, Brown does not anticipate claims 1-5, 9, 10, 15, 19, 20 and 25.

#### **CLAIM REJECTIONS UNDER 35 U.S.C. §103**

Claim 22 is rejected under 35 U.S.C. 103(a) as obvious over Kawasaki, analyzed above.

Applicants incorporate their previous distinctions over Kawasaki. Additionally, claim 22 depends from claim 21, which recites an apparatus for administering a suspendible contrast agent. Applicants analyzed "contrast agent" above, and note that Kawasaki's mixer is configured for mixing cement. Thus, Kawasaki is non-analogous art. There is no reasonable expectation of success that Kawasaki's apparatus would administer a suspendible contrast agent in suspension. A person of ordinary skill in the relevant art would not consider the configuration of a cement mixer relevant to maintaining a suspendible contrast agent in suspension. A person of ordinary skill in the art would not modify the device of Kawasaki with the dimensions claimed in order to arrive at Applicants' claim 22 apparatus.

For at least these reasons, Kawasaki does not render claim 22 obvious.

#### **ALLOWABLE SUBJECT MATTER**

Claims 6, 7, and 11-14 are objected to as depending from a rejected base claim, but containing allowable subject matter.

Applicant has rewritten claim 4 in independent form and including all the limitations of dependent claim 6, now canceled. Because original claim 6 contained allowable subject matter, amended independent claim 4 and the claims from which it depends contain allowable subject matter. Therefore, the amendment places claims 4, 5-7, and 9-13 in condition for allowance.

#### **CONCLUSION**

The application is believed to be in complete condition for allowance with no fees due. If fees are deemed necessary, the Office is authorized to charge them to Deposit Account 20-0809. The Examiner is invited to contact Applicant's undersigned representative with questions.

Respectfully submitted,  
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